

SENECA CROSSING SECTION I HOME-OWNERS ASSOCIATION, INC.

V.

Respondent

Case No. 24-08

According to the materials submitted by the Association to the Commission, the Association's Board held a hearing on the matter in March 2008, to which Mr. Mejia was invited but which he did not attend. The

Association's Board decided at that hearing to file its complaint with the Commission.

Mr. Mejia filed an answer to the complaint essentially admitting the allegations in the complaint but arguing that the unapproved changes were compatible with the community and that the Association's failure to approve the changes was unreasonable.¹

The case went to mediation on September 11, 2008. While the mediation process itself is confidential, any agreement reached at mediation is not. The parties did in fact reach agreement pursuant to which Mr. Mejia agreed to submit to the Association, by January 28, 2009, plans for replacing the exterior lighting and installing landscaping in front of the stone wall. The actual work was to be completed by April 30, 2009.

By letter dated February 3, 2009, the Association represented to the Commission that Mr. Mejia had failed to meet the January 28 deadline. The letter requested the Commission to set the case for hearing. The Association also filed an amended complaint adding a request for costs and legal fees. Mr. Mejia responded by letter that the reason he did not meet the January 28 deadline was the landscapers he contacted would not have any suitable plant material available until March. He did not object to the amended complaint.

The Commission accepted jurisdiction over the case at its October 2009 meeting, appointed a Hearing Panel, and set the case for hearing on November 12.

The Association appeared at the hearing by counsel. Neither Mr. Mejia nor anyone representing him appeared. After the Association's witnesses were sworn and Commission Exhibit 1 was received in evidence, Mrs. Mejia entered the hearing room.² She stated that her husband would not be coming and that she did not intend to testify, but she had photographs showing that the promised

¹ The answer was filed by counsel for Mr. Mejia. Counsel withdrew his appearance prior to the hearing in this case.

² Commission Exhibit 1 is the Commission's record in this case. It includes the complaint and answer, the Association's governing documents, the mediation settlement agreement, correspondence, and various other items mentioned in this Order.

work had been completed.³ The Panel took a brief recess to allow Mrs. Mejia and the Association's representatives to meet off the record.

When the hearing resumed, the Association announced that it appeared from the photographs the architectural violations had been abated. The Association requested and was granted a continuance so it could determine from a site inspection whether the matter was in fact resolved.

The Association's subsequent motion for an award of attorneys' fees states:

On November 16, 2009, Complainant determined that (1) Respondent's covenant violations were extinguished on or about November 11, 2009, and (2) Respondent had fully performed all his obligations pursuant to the CCOC Mediation Agreement.

The Panel will dismiss the complaint as moot. The only remaining issue is the costs and attorneys' fee request.

II. Conclusion and Discussion

The motion, including the accompanying affidavit, seeks an award of \$3,220.00 at the associate attorney billing rate of \$200.00 per hour, and costs of \$50.00. The motion contains a breakdown of time spent on the case, totaling 16.1 hours: 6.25 hours spent through mediation; 8.35 hours spent thereafter through the hearing; and 1.5 hours spent in preparing the motion for fees and costs. The motion also addresses various factors listed in Md. Rules of Prof. Conduct, Rule 1.5 for determining reasonableness of fees. See *Friolo v. Frankel*, 819 A.2d 354, 366 (Md. App. 2003).

Mont. Cnty. Code § 10B-13(d) contains the following provision relating to an award of attorneys' fees and costs:

The hearing panel may award costs, including a reasonable attorney's fee, to any party if another party:

³ Mrs. Mejia is not a party to this case and there is no indication that she is an attorney. She therefore could not participate formally in the hearing, either *pro se* or in a representative capacity.

(1) filed or maintained a frivolous dispute, or filed or maintained a dispute in other than good faith;

(2) unreasonably refused to accept mediation of a dispute, or unreasonably withdrew from ongoing mediation; or

(3) substantially delayed or hindered the dispute resolution process without good cause.

The hearing panel may also award costs or attorney's fees if an association document so requires and the award is reasonable under the circumstances. The hearing panel may also require the losing party in a dispute to pay all or part of the filing fee.

The Association's motion in this case is not based on any claim of procedural misconduct by Mr. Mejia. Instead, the motion is based on the Association's Declaration of Covenants, Conditions and Restrictions, which contains the following relevant provision:

Section 11.02. Enforcement. . . . If the Association, or an Owner or mortgagee of any Lot, successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration . . . or the Rules of the Association, the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation, and such costs shall also be a lien upon the Lot of such Owner, provided the provision of the Maryland Contract Lien Act are substantially fulfilled.

The Code and Declaration provisions, read together, give rise to the following specific questions: (A) whether the Declaration *requires* an award of fees in the circumstances of this case, *i.e.*, whether the Association *successfully* brought this action; (B) whether and to what extent an award of fees is *reasonable*; and (C) whether there are any other factors informing the Panel's discretion to award or deny fees. These questions are considered in turn, below.

A. Success

Although the Association was not the beneficiary of a favorable Panel ruling, it nevertheless prevailed in a practical sense: the parties reached a settlement agreement which required Mr. Mejia to remedy the architectural

violations; Mr. Mejia failed to comply with the settlement agreement in a timely way; the Association then pursued its administrative remedies before the Commission; and while the administrative hearing was underway, Mr. Mejia's wife satisfied the Association that the agreed-to architectural work has recently been performed.

Maryland case law decided under fee-shifting statutes such as the Maryland Automotive Warranty Enforcement Act, Md. Code, Commercial Law § 14-1501 *et seq.*, holds that a settlement favorable to a party can be the equivalent of success for fee-shifting purposes. *Hyundai Motor America v. Alley*, 960 A.2d 1257, 1262-64 (Md. App. 2008). The Panel is, of course, bound by State and County laws and relevant case law. Mont. Cnty. Code § 10B-13(e).

The Panel concludes that the Association successfully brought an action to remedy the architectural violations.

B. Reasonableness of Fees

According to the Association's fee motion, the attorney who handled this case has been practicing law in Maryland for about two years. His firm, the Andrews Law Group, has had a long-standing professional relationship with the Association and the firm's practice emphasizes community association law. The Panel concludes that a \$200 hourly rate is not unreasonable under the circumstances.

The Panel also concludes, however, that time spent through mediation (6.25 hours) should not be included in calculating the fee award. The Panel notes that the settlement agreement reached at mediation did not include an award of fees. In addition, the request for fees was not even made until after mediation when the amended complaint was filed. Therefore, only subsequent time spent enforcing the agreement should be included. Similarly, time spent preparing the fee motion (1.5 hours) should be excluded.

C. Other Factors

The Montgomery County Code provision quoted above is permissive, not mandatory: the Panel "may" award reasonable fees if the Association's documents so require. The Panel concludes, in the exercise of its discretion, that a fee award is appropriate in this case.

Mr. Mejia undertook architectural changes without prior Association approval and in clear violation of the Association's Declaration. He admitted doing so in his answer before the Commission. And although he later agreed in writing to remedy the violations, he failed to do so in a timely way. Only with the threat of a hearing facing him (which he did not attend), did he comply with his settlement agreement and remedy the violations. Yet he did not inform the Association until after the hearing actually began.

Mr. Mejia did not file any opposition to the motion, despite a Panel order inviting him to do so. The Panel sees no reason to deny a fee award under the circumstances of this case.

III. Order

Based on the foregoing, it is by the Panel, this _____ day of January, 2010, ORDERED as follows:

1. The complaint is DISMISSED as moot.
2. The motion for an award of the \$50.00 filing fee is GRANTED; respondent Robert Mejia must pay \$50.00 to complainant Seneca Crossing Section I Homeowners Association, Inc. within 30 days after issuance of this Order.
3. The motion for an award of attorneys' fees is GRANTED IN PART; respondent Robert Mejia must pay \$1,670.00 to complainant Seneca Crossing Section I Homeowners Association, Inc. within 30 days after issuance of this Order.
4. Should the Respondent fail to comply with the foregoing orders, the Complainant may proceed to collect the sums due by any method authorized in its governing documents or by law.

Panel members Staci Gelfound and Allen Farrar concur in this Order.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty days after this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Charles H. Fleischer, Panel Chair